Supreme Court, U.S.
FILED

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DONALD OLIVER BRADFORD,

PETITIONER,

V.

ROSIE PRICE BRADFORD,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI

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59 pp

QUESTION PRESENTED FOR REVIEW

I. Whether the Petitioner's due process rights were violated by the Trial Court's denial of the Petitioner's Motion for Relief from Judgment without a hearing?

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OFFICIAL AND UNOFFICIAL

REPORTS AND OPINIONS

The Opinion and Order of the Circuit Court for Blount County, Alabama, William E. Hereford, Judge, dated June 30, 1992, is appended hereto. (App. 17-31).

The Opinion and Order of the Circuit Court for Blount County, Alabama, William E. Hereford, Judge, dated October 2, 1992, is appended hereto. (App. 11-16).

The Orders of the Circuit Court for Blount County, Alabama, William E. Hereford, Judge, dated November 4, 1992, are appended hereto. (App. 10).

The Memorandum of Opinion and Order of the Alabama Court of Civil Appeals, captioned *Donald Oliver Bradford v. Rosie Price Bradford*, Docket No. CIV. AV92000107, dated July 9, 1993, is appended hereto. (App. 3-8).

The Order of the Alabama Court of Civil

Appeals, captioned *Donald Oliver Bradford v. Rosie Price Bradford*, Docket No. AV92000107, dated August 13, 1993, overruling appellant's application for rehearing, is appended hereto. (App. 2).

The Order of the Alabama Supreme Court, captioned *Ex parte Donald Oliver Bradford*, Docket No. 1921835, dated October 15, 1993, denying the petition for writ of certiorari, is appended hereto. (App. 1).

JURISDICTION OF THE COURT

The Alabama Supreme Court issued its Order denying certiorari on October 15, 1993.

No rehearing was requested, and no extension of time was requested.

The United States Constitution, Art. 3, Section 2 confers jurisdiction upon the Supreme Court of the United States in this matter.

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. XIV, section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On June 24, 1992, hearing was held before the Honorable William E. Hereford, presiding Circuit Judge of Blount County, State of Alabama, pursuant to a divorce Complaint filed by the Respondent, Rosie Price Bradford, and duly answered and counterclaimed by the Petitioner, Donald Oliver Bradford. During the course of June 24, 1992, the parties negotiated a settlement of the issues contained within the pleadings, including, but not limited to, the issues of alimony, child support, property division, and custody of the parties' minor daughter.

The Honorable Hugh Nash, counsel for the Respondent and the Honorable Robert Bentley, counsel for the Petitioner negotiated for and on behalf of their clients to resolve the issues presented.

One issue which was discussed by counsel for the parties concerned the monthly payment

of periodic alimony from the Petitioner to the Respondent. It is the Petitioner's contention that it was agreed by the parties prior to reading the agreement for the record and the Trial Courts' consideration thereof, that the periodic alimony would cease should the Respondent remarry, or the parties' minor child die. At some point during the settlement process, the Trial Judge was informed of the above alimony provisions, and he indicated that he would ratify same. Also, during the negotiations the Respondent agreed, through her attorney, that Petitioner would be allowed the right of first refusal as concerned the sale of the parties' home and 200 acres of land. Furthermore, two appraisals would be initiated and if necessary, an objective third, to ensure that Petitioner would be guaranteed fair market value for the real property. At no time, during the settlement

negotiations, did Petitioner agree to any provision concerning life insurance. After negotiations ceased the Trial Court was informed that a settlement had been reached, and the "settlement" was dictated for the record. Approximately half way though the dictation by Respondent's Attorney Nash, Petitioner's Attorney Bentley stopped Mr. Nash to interject the following statement: "On the life insurance policy that ya'll agree to sign, all I did was talk to him about getting life insurance. We don't have anything definite." At the end of the dictation the Trial Court asked each of the parties, "is that your agreement." Whereupon, the Petitioner stated "I guess it is."

On June 30, 1992, the Trial Court signed the parties' Final Decree of Divorce. The Final Decree was in error in that language was added which was not contained in the

agreement as read for the record. In addition, various provisions referred to above were not included in the Final Decree.

Furthermore, in the Final Decree, it states specifically that "the Defendant shall have the right of refusal to purchase said farm for and at the same price or consideration which the Plaintiff has agreed to accept for the purchase of said property by a Third Party." Nowhere in the transcribed record is there such a provision.

On August 28, 1992, the Respondent filed a petition for Rule Nisi. A hearing was held on the Respondent's petition and the Trial Court held the Petitioner in contempt despite his testimony that he was unable to comply with the Decree because of financial hardship. The Petitioner was placed in jail by virtue of the Trial Court's finding of contempt and he remained there for 52 days. He was released under a supersedeas bond from

the Court of Civil Appeals.

On November 2, 1992, the Petitioner filed with the Trial Clerk, an Alabama Rules of Civil Procedure Rule 60(b) Motion and said motion sought to have the Court's Judgment set aside for a variety of reasons. With said Motion the Petitioner attached two Exhibits: "A", which was the transcribed record of the parties's divorce hearing before Judge William Hereford; and "B", which is the parties' Final Decree. The Petitioner filed also, contemporaneously, with the 60(b) Motion, a signed Affidavit. In the Petitioner's (60(b) Motion he states:

" 1. That on or about June 30, 1992, this Honorable Court rendered its Judgment in case number DR-89-162 a Final Decree of Divorce.

2. That in said Judgment it was Ordered, Adjudged and Decreed that the Defendant "shall have the first right of refusal to purchase said farm for and at the

same price or consideration which the Plaintiff has agreed to accept for the purchase of said property by a third party..."

3. Defendant alleges that said order is in direct contradiction of page 10 of the transcribed record, and was at no time agreed to by the Defendant herein.

4. Defendant alleges that all provisions concerning his chance purchase of that certain property is not reflected at all in the transcribed record and is a mere figment and inconsistency which was obviously manufactured in the mind of the Plaintiff's counsel, and was never agreed or assented to by the Defendant herein.

5. Defendant alleges and proves his surprise to said Judgment by reference to the transcribed record and its erroneous counterpart; the final decree, which are both incorporated herein by reference word for

word as Defendant's Exhibits "A" and "B".

6. That this Honorable Court ordered that the Defendant herein be required to provide a life insurance policy no less than $50,000 for the use and benefit of the parties' minor child.

7. Defendant alleges and proves by the transcribed record, (page 7) and its erroneous admission into the final decree for divorce that he neither agreed nor assented to the procurement of such insurance.

8. That this Honorable Court ordered that the Defendant pay to the Plaintiff the sum of $525.00 a month as periodic alimony although the Plaintiff should remarry or cohabitate.

9. Defendant would assert and prove that the respective counsel and this Honorable Court were all appraised of and privy to, a contemporaneous agreement wherein the Defendant would be relieved of periodic

support and alimony should the Plaintiff become remarried or the parties' minor child become deceased.

10. Defendant alleges that in the interest of equity, fairness, and justice the divorce final decree numbered DR-89-162 stands to be set aside.

11. Defendant alleges and proves by reference to page 9 of the transcribed record that he never fully or actually consented to any of the provisions contained therein. (Page 9 Line 13).

12. Defendant alleges and proves that the divorce final decree in case number DR-89-162 is ambiguous in that the dates, and times within which the Defendant was ordered to comply with said provisions were not agreed to in the transcribed record on page 10 lines 3 through 8.

13. Defendant alleges and proves that he has a meritorious defense to the execution

and adherence to the divorce final decree case number DR-89-162 in that: 1. He never agreed to the provisions contained therein, 2. Said decree is unsupported by the transcribed record, and 3. Finally that said decree is inequitable to such an extent as to render it void.

14. Defendant alleges that he was not in agreement with the provisions of Divorce Final Decree number DR-89-162 in that the Defendant herein stated, when asked if it was his agreement, "I guess it is", which could conversely be correlated to asking a criminal defendant whether he is guilty and him stating that: "I guess I was". Obviously, such a qualified statement could never be the object of a calculated, knowing and willful admission. Wherefore, Premises considered, Defendant prays this Honorable Court grant and make an order setting aside the Divorce Judgment heretofore entered on June 30, 1992,

or in the alternative, be granted an opportunity to develop testimony in support of this motion in a hearing to the record."

In the Petitioner's affidavit, he states:

"My name is Donald Oliver Bradford, and I am the Defendant in a contempt action currently before this Court.

On or about June 24, 1992, my wife and I were involved in a divorce proceeding in the Circuit Court of Blount County, Alabama. During the course of that day, my attorney, Bob Bentley, and I attempted to reach and negotiate a settlement with my wife and her attorney as to the issues of property settlement, child custody, and support, among other things. One of the issues which we had attempted to settle concerned the payment of alimony.

Since I know my minor daughter would receive an indirect benefit from the payment of periodic support. I agreed to pay to my wife periodic alimony in a sum certain to be paid until such time as she was remarried, or in the alternative, my daughter should become deceased. It is my understanding, that this Court was appraised of this provision, and that, both parties would agree, through some contractual agreement, to ensure that the letter of such agreement would be adhered to. Much to my surprise and amazement, when we went to the record, Mr Nash (counsel for my wife) stated, in substance, that the alimony would still be payable regardless of my

wife's remarriage, and further, made no reference to the condition concerning the event of my daughter's demise.

Nearly everything that I agreed to at the "negotiation table" changed or was incorrect at the time we went to the record.

One such provision that was stated incorrectly, concerned my right of first refusal. At the time of negotiating a settlement, my wife agreed (and her attorney), that I would be allowed the first chance to purchase our home and land should my wife wish to sell the premises. Attorney Hugh Nash stated to me, directly, that two appraisals would be done, and even an objective third, if need be, to ensure that I would have a fair and objective fair market value by which to purchase. When I first received a "rough draft" of the divorce "final decree", prior to this Court's signing, it stated a totally different provision. I immediately explained to my attorney the defect. On July 14, 1992, I received the Court's signed final decree which stated, erroneously, that I would pay the same price as would be offered by a third part.

Many of the issues concerning time periods (like "X" on page 10 of the transcript) within which I would be bound were never discussed or interpreted contemporaneously with the statements to the record. I was and I'm still not in agreement with the "settlement" provisions as dictated to record or as stated in the final decree.

I neither consented nor assented fully to any of the provisions as stated to the

record, as evidenced by my statement, as to whether this was my agreement, on page 9 of the transcript: "I guess it is." Obviously, there was no full and knowing agreement or consent on my part. I would respectfully request that Honorable Court set aside the divorce final decree in case number DR-89-162 and allow me a trial on the merits. When comparing the transcriptive record and the final decree itself I am sure that this Court can see the patent and plain discrepancies between those items, regardless of any inconsistencies between the "negotiation table" and the record.

Finally, I would show unto this Court that at no time did I agree to any provision concerning life insurance. To be sure, I would refer to page 7 of the transcript wherein my attorney stated as follows: "On the life insurance policy that ya'll agreed to sign, all I did was talk to him about getting life insurance. We didn't have anything definite." Then Mr. Nash dictated that such party provide $50,000.00 worth. What better illustration could there be that I was not in agreement or even aware of such proposals. Issues which I had agreed in negotiation to were either incorrectly stated or twisted in an attempt, as reflected in the final decree, to allow the passage of time to cloud the truth of the correct offers and acceptance in this cause.

An enormous amount of stress and confusion has some impact, I'm sure, upon my faculties at the time of the attorneys going to the record. When new proposals, and amendments were being made at that time, and while being "under the gun", I had little or no idea the full impact of what the alleged

"agreement" was.

Therefore, I would again, respectfully request a trial on the merits."

On November 4, 1992, the Trial Court denied the Petitioner's Rule 60(b) Motion without a hearing, nor prior to any response or answer by the Respondent.

On November 5, 1992, Petitioner gave timely notice of Appeal. A Motion for Supersedeas Bond Pending Appeal was filed on November 12, 1992, with the Clerk of the Alabama Court of Civil Appeals, the Honorable John H. Wilkerson, Jr. Said Motion was granted by the Court of Civil Appeals on November 24, 1992, and Petitioner posted a $500.00 bond with the Blount County Circuit Clerk and was released from custody.

The Respondent filed a Motion to Effectuate Final Decree on November 19, 1992, which was granted by the Trial Court on November 25, 1992.

On July 9, 1993, the Alabama Court of Civil Appeals affirmed the Trial Court's Judgment with opinion. Petitioner made an application for rehearing with the Alabama Court of Civil Appeals which was denied, and thereafter, within the time prescribed by law, Petitioned the Alabama Supreme Court for Writ Of Certiorari, which was also denied. And now this matter, having been filed within ninety days from said denial of petition, comes before this Honorable Court.

ARGUMENT

I. WHETHER THE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE TRIAL COURT'S DENIAL OF THE PETITION'S MOTION FOR RELIEF FROM JUDGMENT WITHOUT A HEARING?

The issue presented in this case concerns the Petitioner's due process right to be heard regarding the loss of property rights as well as the loss of his liberty.

In a timely manner, the Petitioner filed a motion with the trial Court to relieve him from the oppressive effects of a previously rendered judgment. Along with his motion, he provided pertinent excerpts from the record as well as an affidavit relating facts which substantiated his motion. The Respondent did not file any form of response and yet the Trial Court denied the Petitioner's motion, without a hearing.

As Justice Blackmun stated in Logan vs. Zimmerman Brush Company, 455 U.S. 422,

L02 S. CT. 1148 (1982) regarding the issue presented in due process cases, ..."we must determine whether Logan was deprived of a protected interest, and if so, what process was his due?" 455 U.S. at 428.

In the case at bar, were the Respondent's interests protected interests? The Trial Court, in it's denial of the Petitioner's motion without a hearing, precluded him from presenting evidence regarding valuable property rights, as well as his right to liberty. The Petitioner was left in jail on the contempt charge as well as being rendered unable to challenge the erroneous judgment which resulted in the contempt charge.

As this Court stated in Boddie vs. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971), "Absent a countervailing state interest of overriding significance, persons forced to settle their

claims of right and duty through judicial process must be given a meaningful opportunity to be heard." 401 U.S. Code at 377,91 S. Ct. at 785. In the case at bar, once the Respondent entered into the legal system in an effort to resolve his divorce, he should have been afforded the opportunity to be heard. In many respects, although the state has an interest in discouraging frivolous hearings, it is clear from the record that the Petitioner's motion was not a mere attempt to delay. The Petitioner's motion was supported by the record and by his own testimony in the form of an affidavit.

"Due process of law signifies a right to be heard in one's defense." Hovey vs. Elliott, 167 U.S. 409, 417,17 S.Ct. 841,844(1987). It is Petitioner's contention that he was not provided with the most basic form of due process, his day in court. I n conclusion, the Trial Court's denial of

Petitioner's motion for relief from judgement denied Petitioner due process of law as guaranteed by the due process clause of the fourteenth amendment to the United States Constitution.

Respectfully submitted,

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Counsel of Record for Petitioner

APPENDIX

IN THE SUPREME COURT OF ALABAMA

October 15, 1993

1921835

Ex parte Donald Oliver Bradford. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Donald Oliver Bradford v. Rosie Price Bradford) (AV92000107) (Blount: DR-89-162.01)

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

HOUSTON, J. - Hornsby, CJ., Maddox, Shores and Kennedy, JJ., concur.

OFFICE OF

CLERK OF THE COURT OF CIVIL APPEALS

STATE OF ALABAMA

MONTGOMERY

DR 89-162.01

Re: CIV. AV92000107 August 13, 1993

DONALD OLIVER BRADFORD, Appellant

vs.

ROSIE PRICE BRADFORD, Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

Application for rehearing overruled. No opinion written on rehearing.

/s/ JOHN H. WILKERSON, JR.

Clerk, Court of Civil Appeals of Alabama

MAILING ADDRESS:

2600 East South Boulevard, Room 250

Montgomery, Alabama 36116

JUL 09 1993

STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

SPECIAL TERM 1993

AV92000107

Donald Oliver Bradford

v.

Rosie Price Bradford

Appeal from Blount Circuit Court

(DR 89-162.01)

YATES, Judge

This is a divorce case. Donald Oliver Bradford (husband) and Rosie Price Bradford (wife) were divorced on June 30, 1992. The final judgment of divorce was entered incorporating an agreement between the

parties which was read into the record in open court. After the agreement was read, both parties acknowledged to the trial court that it was their agreement. The scant record on appeal makes it difficult for this court to determine what has taken place since the time of the divorce. It appears from the record, however, that as a result of the husband's failure to comply with the provisions of the divorce judgment, the wife filed a petition for rule nisi. On October 2, a hearing was held on the wife's petition, after which the trial court found the husband in contempt. The husband filed a motion to set aside and vacate the judgment, and a Rule 60 (b) motion. Both motions were denied by the trial court and the husband filed a timely appeal to this court.

First, the husband contends that the trial court abused its discretion when it found him in contempt of court.

Specifically, he argues that his inability to pay his obligations under the provisions of the judgment of divorce precludes a finding of contempt.

In a contempt proceeding, this court's review is restricted to questions of law, and the factual findings of the trial court are conclusive if any legal evidence has been presented which supports those findings. Morgan v. Morgan, 582 So. 2d 1147 (Ala. Civ. App. 1991); Ex parte Powers, 523 So. 2d 429 (Ala. Civ. App. 1988); Mims v. Mims, 442 So. 2d 102 (Ala. Civ. App. 1983).

> "The rule is that if it be shown at a contempt hearing that the party cited is unable to comply with the decree of the court due to want of means rather than mere contumacy, then there is no contempt....
>
> "When the accused shows that he is unable to comply, the burden of proof is then on the petitioner to show beyond a reasonable doubt that the accused can comply."

Hurd v. Hurd, 485 So. 2d 1194, 1195 (Ala. Civ. App. 1986) (Citation omitted.)

The trial court in this instance was not convinced that the husband was unable to comply with the financial provisions of the judgment and we agree. The husband, by his own testimony, showed he had access to monies to accommodate other of his obligations, including the promotion and licensing of his business. The record also specifically reflects that he was able to comply with one financial provision of the final judgment in the payment of the farm tractor, which was awarded to the wife. For reasons which are unclear to this court the husband did not attempt to meet the financial obligations to his wife and minor child. He made no efforts whatsoever to comply with his financial obligations until several days prior to the contempt proceeding, and then his efforts were minimal. We find that the trial court had proof from which it could determine that the husband could comply with the order.

Second, the husband contends that the trial court abused its discretion by denying a hearing on his Rule 60(b) motion. Rule 60(b), A.R.Civ.P., provides as follows:

"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

We first note that a ruling under Rule 60(b) is subject to the discretion of the trial court and such ruling is presumed to be correct and will not be disturbed on appeal absent an abuse of that discretion. Waldron

v. Fikes, 378 So. 2d 1138 (Ala. Civ. App. 1979). "It has been said that the court need not hold a hearing on a 60(b) motion if it clearly is without substance and merely an attempt to burden the court with frivolous contentions." Id. at 1139. Under a Rule 60(b) motion, relief is justified when exceptional circumstances can be shown for relief. Rodgers v. Rodgers, 424 So. 2d 647 (Ala. Civ. App. 1982).

After careful review of the record and the Rule 60(b) motion filed by the husband, we see no exceptional circumstances warranting relief under this rule. We find no abuse of discretion in the trial court's finding of contempt or its denial of a hearing pursuant to the Rule 60(b) motion. Therefore, the trial court's decision is due to be affirmed.

AFFIRMED.

Robertson, P. J., and Thigpen, J., concur.

State of Alabama | Case Number

Unified Judicial System | DR 89-162.01

CASE ACTION SUMMARY

CONTINUATION

ROSIE BRADFORD VS. DONALD BRADFORD

DATE	ACTIONS, JUDGMENTS, CASE NOTES
10/8/92	Decree; c/c to Attys Nash & Drake and Bentley
10/30/92	Affidavit of Donald Bradford Submission of Additional Evidence and Motion to set Aside & Vacate Judgment filed by Atty Drake
11/2/92	Rule 60-B Motion; Affidavit of Def.

11/4/92 The Defendant's Rule 60 B Motion is hereby denied.

/s/ Wm E Hereford, Judge

The Defendant's Motion to Set Aside and Vacate Judgment is hereby denied.

/s/ Wm E Hereford, Judge

IN THE CIRCUIT COURT

FOR BLOUNT COUNTY, ALABAMA

ROSIE PRICE BRADFORD,	*	CASE NO.
PLAINTIFF	*	DR 89-162.01
VS	*	
DONALD OLIVER BRADFORD,	*	
DEFENDANT	*	

DECREE

The Petition for Rule Nisi filed by the Plaintiff on August 28, 1992, being heretofore set on September 29, 1992, which, for good cause, was continued by the Court until today, October 2, 1992, at 9:00 A.M., and said Petition coming on for hearing, there being present the Plaintiff, the Defendant, and the attorneys of record for the Plaintiff and for the Defendant, and upon the testimony taken before the Court, the Court finds that the Defendant is wilfully and contemptuously in violation of the terms

of the Decree entered by the Court on June 30, 1992.

The Court further finds that the child support Ordered and Decreed to be paid by the Court in its decree, had not been paid at the time of the filing of the Petition for Rule Nisi, although the Defendant has stated that a deposit of $100.00 had been made subsequent to the filing of the Petition for Rule Nisi but prior to the date hereof, but no evidence of such payment was produced in Court, other than his statement. The Court further finds that no payment has been made required by and pursuant to the Decree of monthly alimony by the Defendant to the Plaintiff, which as of October 1, 1992, amounts to the sum of $2,100.00; that the payment of the $11,500.00 or more required by said Decree from the cash or loan value and accumulated dividends of the policy of insurance issued by State Farm Insurance as required by the Decree has not

been paid, nor has he paid the further sum of $16,500.00 or the $5,000.00 attorney's fee required to be paid along with the other items of cash as herein set out, within (30) thirty days subsequent to the date of the Decree, nor as of this date.

The Court further finds that the Defendant has refused to execute and deliver to the Plaintiff a deed conveying all of his interest in and to the 200 acres of land on which the home of the Parties is located, as required by said Decree, which deed is in the possession of the attorney of record for the Defendant.

The Court further finds that the Plaintiff has wilfully and contemptuously violated the terms of the Decree in that without the consent of the Plaintiff and contrary to the direction of the Plaintiff, Defendant entered into the home of the Plaintiff at night and removed the daughter

of the Parties, which occurred on September 10, 1992 and the Court further finds that the Defendant has taken from the premises of Plaintiff and used equipment vested in the Plaintiff by said Decree since the entering of the Decree, without the consent of the Plaintiff.

WHEREFORE, It is ORDERED, ADJUDGED and DECREED by the Court that the Defendant is found to be in wilful and contemptuous contempt of the Court and its Decree and by reason thereof and by the violation of the terms of the Decree, in that the Defendant without the consent of the Plaintiff and contrary to her direction, entered into the home of the Plaintiff on the night of September 10, 1992 and removed the daughter of the Parties and by Defendant taking and using the equipment vested in the Plaintiff since the Decree, without the consent of the Plaintiff, for both of which he is sentenced

to (5) five days in the County Jail for such contempt, beginning at such time as he has purged himself of contempt as hereinafter provided.

In order for the Defendant to purge himself of contempt, he is required to produce evidence of payment of child support, which as of this day is the sum of $100.00; the payment, pursuant to the Decree of monthly alimony, which as of October 1, 1992, amounts to the sum of $2,100.00; the payment of the further sum of $33,000.00 as provided in said Decree, plus interest thereon in the amount of $330.00, as of October 1, 1992, plus the additional sum of interest at the rate of $10.85 per day, subsequent to October 1, 1992; and the execution and delivery of the deed conveying to the Plaintiff the 200 acres of land on which the home of the Parties is located, together with other improvements, as required under said Decree,

said unexecuted deed now being in the possession of the attorney of record for the Defendant.

It is further ORDERED, ADJUDGED and DECREED that the Defendant pay the sum of $500.00 as a reasonable attorney's fee to the attorney for the Plaintiff in this proceeding plus the further sum of $500.00 for the use and benefit of the Plaintiff for the use of the equipment by the Defendant subsequent to the Decree of June 30, 1992, which sums are to be paid to the Clerk of this Court within (30) thirty days from the date hereof.

DONE this the 2nd day of October, 1992.

/s/ William E. Hereford
Circuit Judge

IN THE CIRCUIT COURT
FOR BLOUNT COUNTY, ALABAMA

ROSIE PRICE BRADFORD,	*	CASE NO.
PLAINTIFF	*	DR 89-162
VS	*	
DONALD OLIVER BRADFORD,	*	
DEFENDANT	*	

FINAL DECREE

This cause coming on for ore tenus hearing on Wednesday, June 24, 1992; and being submitted upon the Bill of Complaint, the Answer and Counterclaim of the Defendant and the Answer to the Counterclaim filed by the Plaintiff and Counter/Defendant and upon the testimony previously taken in an ore tenus hearing on Monday, April 29, 1991 and continuing through April 30, 1991, and upon consideration thereof, the Court is of the opinion that the Plaintiff is entitled to the relief prayed for in said complaint.

It is, therefore, ORDERED, ADJUDGED and

DECREED by the Court that the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be, and the same are hereby dissolved, and the said Rosie Price Bradford is forever divorced from the said Donald Oliver Bradford, for and on account of incompatibility of temperament and an irretrievable breakdown of the marriage, which incompatibility stems from the acts and lifestyle of the Defendant.

The Court further finds that the Parties have been married to each other for a period in excess of 31 years, next preceding the hearing in this cause, and there have been (4) four children born to the marriage, (3) three of which are adults and no longer dependent upon the Parties to the cause. The fourth child is a minor daughter, Jill Bradford, whose date of birth is May 22, 1973, which child is severely mentally retarded and is solely dependent upon the

Parties hereto, (which condition has existed from infancy), and that such dependency, resulting from the mental disabilities of said child, will continue to render said child incapable of self-support during her lifetime and that it is necessary to require continuing, permanent support for said child, although extended beyond majority.

The Court further finds that said child, Jill Bradford, is presently in the custody and care of the Plaintiff.

It is ORDERED, ADJUDGED and DECREED by the Court that the Plaintiff have the (custody) of said daughter, Jill Bradford. The Defendant shall have rights of visitation with the child on alternate weeks from 5:00 P.M., on Sunday until 5:00 P.M., Tuesday, beginning the 1st Sunday subsequent to the date of this Decree. Each of the Parties shall be entitled to have the child with them on the respective Mother's Day and Father's

Day of each year and shall have visitation on the alternate holidays from 9:00 A.M., until 9:00 P.M., with the Defendant having visitation beginning on July 4, 1992. The Court encourages the Parties that the Defendant should provide relief on weekends for the Plaintiff, and that the Defendant shall have such additional visitation as the Parties may agree.

It is further ORDERED, ADJUDGED and DECREED by the Court that the Defendant shall pay to the Plaintiff as support for said child, the sum of $25.00 per month, and shall in addition be responsible for (1/2) one-half of the necessary dental expenses of said child and for (1/2) one-half of the medical expenses for said child not covered by insurance or Medicaid, except that the Plaintiff shall be responsible for making the payments of the deductibles required by her insurance for hospital stays, during the

period of time that the Plaintiff is able to maintain medical insurance through her employer. In the event that the Plaintiff is no longer employed so that she can maintain medical insurance through her job, the Parties will equally pay all medical deductions as well as those charges in excess of coverage for Medicaid, which requirement of support shall continue during the lifetime of said child and beyond her majority. All payments for support shall be paid to the Plaintiff by making direct deposits to a checking account to the Community Bank in her name, not later than the 1st day of each month hereafter, beginning July 1, 1992.

It is further ORDERED, ADJUDGED and DECREED that each party hereto will provide life insurance on their lives in an amount not less that $50,000.00 with the beneficiary being the other Party as Trustee for the use and benefit for their daughter, Jill

Bradford, if she survives, or if she had predeceased the insured, then the proceeds of the policy shall be distributed equally to the remaining children of the Parties equally, share and share alike.

It being shown to the Court that the Parties hereto have entered into an Agreement concerning a property settlement between the Parties of the property acquired by the Parties during the marriage, and as a part thereof, the Parties have agreed that the Defendant will pay to the Plaintiff the sum of $525.00 per month, which sum will continue to be payable, although the Plaintiff may in the future elect to remarry or cohabitate with a member of the opposite sex which would otherwise terminate a "periodic" alimony payment, as provided under Section 30-2-5 of the 1975 Code of the State of Alabama, which sum shall also be paid to the Plaintiff by making direct deposits to a checking account

to the Community Bank in her name, not later than the 1st day of each month hereafter, beginning July 1, 1992.

In addition thereto, the Defendant will pay to the Plaintiff a sum equal to the cash or loan value and the accumulated dividends under that certain policy of insurance issued by State Farm Life Insurance, on the life of the Defendant, the total of which sum is in excess of $11,500.00 and is represented by Policy #LF-0192-0405. The Defendant will further pay to the Plaintiff the sum of $16,500.00.

The Court finds that the Parties jointly own, with rights of survivorship, a tract of land approximately 200 acres on which the home of the Parties is located, as well as other improvements located thereon, and the Parties as a part of the settlement have agreed that the said farm property and improvements thereon, as hereinafter

described, be vested in the Plaintiff and that the Defendant will convey unto the Plaintiff, all of his interest and every contingent right of remainder in and to said property unto the Plaintiff, provided, however, that in the event the Plaintiff at some time in the future elects to sell said farm, that the Defendant shall have the first right of refusal to purchase said farm for and at the same price or consideration which the Plaintiff has agreed to accept for the purchase of said property by a Third Party. In the event the Plaintiff elects to sell the property and has obtained a purchaser who has made a bona-fide offer for the property in an amount which the Plaintiff would be willing to accept, the Plaintiff will thereupon notify the Defendant of the terms of the offer and of her willingness to sell the property for such sum. That notice will be given to the Defendant by Certified Mail,

addressed to him at Route #4, Box 98-A, Altoona, Alabama, 35952, or at such other address as Defendant furnishes to Plaintiff in writing. The Defendant must then notify the Plaintiff in writing within (12) twelve days from the date of the notice mailed by the plaintiff to the Defendant that he elects to exercise his option to purchase and that thereafter, the closing of the sale must be made within (30) thirty days thereafter. A failure of the Defendant to respond within said (12) twelve day period shall constitute a decline of his right to purchase and the Plaintiff will then be free to proceed with the sale of said property, provided, however, that this Option to Purchase shall not be construed to be an interest in the land, nor shall it prevent the Plaintiff from refinancing the present indebtedness on said property or any subsequent refinancing that she may elect, but shall apply only to the

purchase of said property as opposed to a refinancing or mortgaging thereof. This first right of refusal is personal to the Defendant and cannot be transferred or assigned by him, and will terminate at his death, if not sooner terminated by his decline of purchase.

The real estate consisting of the farm hereinabove referred to is more particularly described as follows, viz:

TRACT I:
The S 1/2 of the NE 1/4 of Section 16, Township 11, Range 1 West, containing 80 acres, more or less. Mineral and mining rights excepted from the SW 1/4 of the NE 1/4 of Section 16, Township 11, Range 1 West. Subject to existing rights of way for public roads and utility lines.

TRACT II:
Beginning at the northeast corner of the SE 1/4 of SE 1/4, Section 16, and running west 105 yards; thence south 335 yards to Blountsville-Hanceville Road; thence in an easterly direction along said road to each boundary of said forty; thence north to point of beginning. NW 1/4 of SE 1/4; E 1/2 of SE 1/4 of NW 1/4 and NE 1/4 of SE 1/4, all in Section 16, Township 11, Range 1 West, containing in all 106 acres, more or less, Blount County, Alabama. Subject to existing

rights of way for public roads and utility lines.

Tracts I and II contain in the aggregate 186 acres, more or less.

Also:

Commencing at the NE corner of the SE 1/4 of the SE 1/4 of Section 16, Township 11 South, Range 1 West, thence West 315 feet to the point of beginning; thence West 142.5 feet; thence West along a fence and excepted property line North 89 degrees 30' West 600 feet and North 89 degrees 00' West 378 feet to a point; thence N 89 degrees 00' West 30 feet; thence South 48 degrees 17' East 1498.07 feet; thence South 89 degrees 30' E, 30 feet to a post and iron corner; thence North along a fence line 970 feet to the point of beginning. Containing 13 1/2 acres, more or less.

Said land being in the SE 1/4 of the SE 1/4 of Section 16, Township 11 South, Range 1 West, Blount County, Alabama.

That in addition thereto, the Plaintiff shall be vested with title to the farm tractor, farm tools, equipment and supplies, all household belongings, tools and equipment located upon said real estate. In the event the Defendant has imposed any lien upon the tractor, farm tools, equipment and supplies, or any of them, or has moved or caused the same to be moved, then he shall deliver said

equipment free of all liens or encumbrances to the Plaintiff. Title to the 1989 Bonneville automobile is presently vested in the Plaintiff and shall remain her property.

That in addition there'o, the Defendant shall pay a reasonable attorneys fee to the attorney for the Plaintiff in the amount of $5,000.00. That all payments of cash required to be paid hereunder, including the reasonable attorneys fee shall be paid within (30) thirty days from the date hereof.

It is further ORDERED, ADJUDGED and DECREED that the Defendant shall be entitled to remove from the home, any items of personal clothing which he chooses to remove, within (10) ten days from the date hereof, which will be done at such time as is reasonably agreeable between the Parties.

It is ORDERED, ADJUDGED and DECREED that upon the payment and conveyance of the property hereinabove set forth by the

Defendant to the Plaintiff, the Plaintiff will be divested of any interest that she may have in the real estate standing in the name of the Defendant alone, consisting of the 278 Lounge Property in Etowah County, and the real estate on which a Restaurant had been built, which subsequently burned, located in the Rainbow Crossing area of Blount County, Alabama, together with all other personal property consisting of a pickup truck presently used by the Defendant and titled in his name, a camper, a mobile home, and all claims of indebtedness owed to the Parties by the Defendant's brother, Larry Bradford or any other third party which has been involved in the litigation between these Parties in this case.

It is the intention of the Parties hereto and of this Court that this be a Final Property Division and Settlement in Full of all matters of controversy between the

Parties which is ratified and confirmed by the Court.

It is further ORDERED, ADJUDGED and DECREED that neither Party shall marry again, except to each other, until (60) sixty days after the date of the Judgment of Divorce, and if an appeal is taken, which must be instituted within (42) forty-two days from the date of this judgment, or from the date that a post-trial motion is denied, then neither Party shall again marry, except to each other, during the pendency of said appeal.

It is further ORDERED that both Parties be and are hereby permitted to again contract marriage upon the payment of the cost of this suit.

It is further ORDERED that Donald Oliver Bradford, the Defendant, pay the cost herein taxed, for which execution may issue.

DONE and ORDERED this the 30 day of

June, 1992.

/s/ WILLIAM E. HEREFORD
Circuit Judge